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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: FREY, F. ET AL - 1 PCT

SERIAL NO.: 10/550,250

PCT NO.: PCT/IB2004/000829 FILED: MARCH 22, 2004

TITLE: STANDARDIZED TESTING MEDIUM FOR THE QUALITY OF A
WASHING, CLEANING AND/OR DRYING PROCESS

SUBMISSION OF INTERNATIONAL PRELIMINARY EXAMINATION REPORT

MAIL STOP AMENDMENTS


Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Attached hereto is a copy of the International Preliminary Examination Report.

It is hereby requested that receipt of this International Preliminary Examination Report be acknowledged by the Patent Office.

Respectfully submitted,
Ernst FABER


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Enclosures: Copy of International Preliminary Examination Report

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 13, 2006.


Melissa Konko

PATENT COOPERATION TREATY

PCT/IB2004/000829

From the INTERNATIONAL BUREAU

PCT

NOTIFICATION OF TRANSMITTAL
OF COPIES OF TRANSLATION
OF THE INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY
(CHAPTER I OR CHAPTER II
OF THE PATENT COOPERATION TREATY)
(PCT Rules 44bis.3(c) and 72.2)

To:

HEISEL, Wolfgang
Schmidstrasse 9
CH-8570 Weinfelden
SUISSE

EINGEGANGEN

03. MRZ. 2006

F. J. Scannett C2

Date of mailing (<i>day/month/year</i>) 02 March 2006 (02.03.2006)	
Applicant's or agent's file reference 000366-M	IMPORTANT NOTIFICATION
International application No. PCT/IB2004/000829	International filing date (<i>day/month/year</i>) 22 March 2004 (22.03.2004)
Applicant <div style="text-align: center;">EMPA TESTMATERIALIEN AG et al</div>	

1. Transmittal of the translation to the applicant.

- ☒ The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter I).
- ☐ The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter II).

2. Transmittal of the copy of the translation to the designated or elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following designated or elected Offices requiring such translation:

None

The following designated or elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, EG, EP, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OA, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability (Chapter II).

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned within the applicable time limit (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

<p>The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland</p>	<p>Authorized officer <div style="text-align: center;">Idhir Britel</div></p>
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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 000366-M	FOR FURTHER ACTION	See item 4 below
International application No. PCT/IB2004/000829	International filing date (<i>day/month/year</i>) 22 March 2004 (22.03.2004)	Priority date (<i>day/month/year</i>) 25 March 2003 (25.03.2003)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant EMPA TESTMATERIALIEN AG		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).																								
2.	This REPORT consists of a total of 10 sheets, including this cover sheet. In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 60%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input checked="" type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input checked="" type="checkbox"/>	Box No. VII	Certain defects in the international application	<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application
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<input checked="" type="checkbox"/>	Box No. VII	Certain defects in the international application																							
<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application																							
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 21 February 2006 (21.02.2006)
Facsimile No. +41 22 740 14 35	Authorized officer <div style="text-align: center; font-weight: bold;">Idhir Britel</div>
Form PCT/IB/373 (January 2004)	Telephone No. +41 22 338 70 60

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

Translation

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing
(day/month/year)

Applicant's or agent's file reference

000366-M

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/IB2004/000829

International filing date (day/month/year)

22.03.2004

Priority date (day/month/year)

25.03.2003

International Patent Classification (IPC) or both national classification and IPC

Applicant

EMPA TESTMATERIALIEN AG

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/IB2004/000829

Box No. 1

Basis of this opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language

_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/IB2004/000829

Box No. II

Priority

1. ☒ The following document has not yet been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

International application No.
PCT/IB2004/000829

1. Statement			
Novelty (N)	Claims		YES
	Claims	1	NO
Inventive step (IS)	Claims	2-9	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-9	YES
	Claims		NO

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/IB2004/000829

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/IB2004/000829

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/IB2004/000829

Box No. VIII **Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/IB2004/000829

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

Continuation of Boxes V, VII and VIII

1. Reference is made to the following document:

D1: WO 98/30898 A

2. The application does not fulfill the requirements of the Art. 6 PCT, because the independent claim 1 is not clear.

- a. The claim 1 refers to a testing material, which is defined, among other things, in that (i) the particles are applied on the object "with a defined density," which particles (ii) "can be detached from the object through the action of physical and/or chemical effects". However, the reader of the claim 1 is uncertain about the technical meaning of these features for the following reasons:
- i) The feature "applied with a defined density" means only that the density of the applied coating is defined. Thus a homogeneous application of a spray-coat of the detached particles, as, for instance, in D1 (see D1, Summary, figures 1-3) also leads to a "defined", that is, a certain density. In the widest sense, a manual coating of blotches of a particular size or shape also leads to application of the particles with a defined density.
 - ii) The feature "particles detachable from the object through the action of physical and/or chemical effects" is very vague, because particles which cannot be detached from an object by means of an appropriate "physical and/or chemical action" probably do not exist.

Therefore the reader is uncertain about the subject defined by these features, in contradiction to the requirements of Art. 6 PCT.

- b. In the claim 1, the essential, technical features, which are necessary to define the invention are not described clearly.

The underlying problem of the application is to provide a test material as well as a method, by means of which a standardized determination, in particular of the mechanical activity of an aggregate, such as, for example, of a washing machine or a dish washer, and the mechanical or chemical processing of the goods to be washed, cleaned or dried, connected with it, is possible (ref. page 4, lines 22-27).

An essential feature for solving this problem is that the particles are deposited on the object or the substrate element, wherein the retaining force, which holds the particles on the substrate element, is "defined" (cf. page 6, lines 25-27, page 9, lines 13-17). This has been called the actual "core idea of the invention".

Thus the underlying concept of the invention is to provide a test material in which the type, the number, and the retaining force of the corresponding applied particles are "defined", so that, depending on the washing, cleaning and/or drying processes to be evaluated, the deficit in the number (and where applicable, size and the retaining force) of the particles can be easily monitored. In this manner, the test material provides a simple possibility for the evaluation of the quality of the washing, cleaning and/or drying processes.

However, no such feature, aimed at the "defined" retaining force and the size of the particles, is detailed in claim 1. Thus the independent claim 1 does not fulfill the requirements of Art. 6 PCT in association with Rule 6.3(a) PCT.

Due to the abovementioned deficiency in the essential features in claim 1, the claimed scope of protection is larger than that justified by the description and the drawing. Hence, the claim 1 is not supported, as prescribed in PCT Article 6, in its entire claimed scope by the description.

- c. The reader of claim 6 is uncertain (PCT Article 6) about how the particles "say, proteins, can have the defined sizes", because blood, ketchup, foodstuff count as *substances*, which do not consist of homogeneous particles.

3. In that respect, the subject matter of the independent claim 1 in its present wording does not represent a novelty within the meaning of PCT Article 33(2).

- a. The document D1 discloses all the features of the independent claim 1, in particular (see D1, page 1, line 24 - page 2, line 19, page 4, lines 14-31, figures 1-3):

- a test material for a standardized determination of the quality of a washing, cleaning and/or drying process, wherein
- the test material comprises a two or three dimensional object with a substrate element (20), and particles detachable from the object through physical and/or chemical action are applied on the object with a "defined density".

Hence the subject matter of the claim 1 is not novel (PCT Article 33(2)).

Let us here point out that in D1, the jets (34), which are under pressure, ensure, in combination with the matrix (22), that the particles are applied onto the substrate element(20) with a specified, that is, a defined, density through adjustment of the jets.

4. However, the combination of the features in the dependent claim 2 seems to be neither known from the present prior art, nor is it rendered obvious through it, to the extent that the objections raised under Clause 2 in regard to the lack of clarity are also eliminated.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/IB2004/000829

Supplemental Box

The reasons are as follows:

The test material according to document D1 is produced by means of an automated method, in which different types of "stains", possibly dissolved in water, are sprayed on a test material. However, in D1, as well as in the other documents of the present prior art, there is no hint indicating that particles of a "defined" size are applied by means of a binding agent that ensures a "defined retaining force" of the particles on the test material.

5. Furthermore, the following objections have been raised:

A document, which reflects the prior art described in page 2, lines 6-20, was not mentioned in the description (PCT Rule 5.1 (a)(ii)). Furthermore, contrary to PCT Rule 5.1 (a)(ii), the description does not cite document D1 or indicate the relevant prior art disclosed therein.